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5   UNITED STATES DISTRICT COURT
                  WESTERN DISTRICT OF WASHINGTON
6   AT SEATTLE

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EWELL COLEMAN, *et al.*,
8   Case No. C13-1788RSL
                              Plaintiffs,
9   v.   ORDER GRANTING MOTION
                                               TO DISMISS
10   THE BOEING COMPANY,

                              Defendant.
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12   This matter comes before the Court on "Defendant Boeing's Motion to Dismiss"

13   (Dkt. # 7). Defendant seeks dismissal of Plaintiffs Ewell Coleman's and Darlene

14   Coleman's complaint alleging discrimination claims under Title VII of the Civil Rights

15   Act of 1964 ("Title VII"). Defendant's motion was originally noted for consideration on

16   the Court's calendar for November 1, 2013. Dkt. # 7. On November 6, 2013, the Court

17   granted Plaintiffs' request for additional time to respond to Defendant's motion and re-

18   noted the motion on the Court's calendar for December 13, 2013. Dkt. # 13. Despite

19   giving Plaintiffs an additional six weeks to file an opposition to Defendant's motion,

20   Plaintiffs have not responded to Defendant's motion.

21   In the context of a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the

22   allegations of the complaint are accepted as true and construed in the light most

23   favorable to plaintiff. In re Syntex Corp. Sec. Litig., 95 F.3d 922, 925-26 (9th Cir.

24   1996); LSO, Ltd. v. Stroh, 205 F.3d 1146, 1150 n.2 (9th Cir. 2000). The question for

25   the Court is whether the well-pled facts in the complaint sufficiently state a "plausible"

26   ORDER GRANTING DEFENDANT'S MOTION TO DISMISS - 1

1   ground for relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Having

2   reviewed the papers submitted by Defendant,[1] the Court finds the following:

3   Plaintiffs' claims are barred by the statute of limitations. A person who seeks

4   relief under Title VII must exhaust administrative remedies before filing a civil lawsuit

5   by filing a charge of discrimination with the EEOC or the state administrative or local

6   administrative agency. Surrell v. Cal. Water Serv. Co., 518 F.3d 1097, 1103 (9th Cir.

7   2008). The person must file a charge with the EEOC within 180 days after the alleged

8   wrongful employment conduct occurred, or with the state administrative agency within

9   300 days of the alleged discriminatory conduct. Id. (citing 42 U.S.C. § 2000e-5(e)(1)).

10 A person may only file a civil lawsuit after receiving a right-to-sue letter from the

11 EEOC. Dandino, Inc. v. U.S. Dept. of Transp., 729 F.3d 917, 922 (9th Cir. 2013). After

12 receiving a right-to-sue letter, a person has 90 days to file suit. Id. (citing 42 U.S.C. §

13 2000-e(5)(f)(1)). If a person fails to file within that 90-day period, the action is barred

    by the statute of limitations. Scholar v. Pac. Bell, 963 F.2d 264, 266-67 (9th Cir. 1992).

14   Mr. Coleman filed a charge of discrimination with the EEOC on September 24,

15 2010. Dkt. # 8 at 6. In his charge, he claimed that Defendant discriminated against him

16 on the basis of race and religion, and he alleged that his employment was terminated in

17 retaliation for opposing discrimination. Id. The EEOC issued a right-to-sue letter to

18 Mr. Coleman on January 24, 2012. Id. at 9. Mr. Coleman's complaint in this matter

19 was filed on September 13, 2013, long after the 90 day period for filing suit had expired.

20 Dkt. # 2 at 6. Plaintiff's Title VII claims are, therefore, barred by the statute of

21 limitations. Scholar, 963 F.2d at 266-67.

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23   [1] The Court has taken judicial notice of Mr. Coleman's charge of discrimination filed
    with the Equal Employment Opportunity Commission ("EEOC") and the EEOC's right-to-sue
24 letter as they are matters of public record. Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442
    F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice of court filings and other matters of
25 public record); Cunningham v. Litton Indus., 413 F.2d 887, 889 n.2 (9th Cir. 1969) (taking
    judicial notice of EEOC decision).

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2   For all of the foregoing reasons, the Court GRANTS Defendant's motion to

3 dismiss (Dkt. # 7). Because Plaintiffs' claims are barred by the statute of limitations and

4 the alleged and judicially-noticed facts show that amendment would be futile, Plaintiffs'

5 complaint is dismissed without leave to amend. The Clerk is directed to enter judgment

6 in favor of Defendant and against Plaintiffs.

        DATED this 23rd day of January, 2014.

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10   Robert S. Lasnik
                        United States District Judge

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